

**Procedure for Obtaining An Order Authorizing Repossession of
Either Residential or Commercial Premises Without a Hearing**
(Judge Zurzolo's cases only)

In October 1990, I instituted a procedure for obtaining an order authorizing repossession of residential premises without a hearing. I have since expanded the scope of the procedure to also include commercial properties. The revised procedure outlined below shall be followed.

A. Purpose of the procedure

The purpose of the procedure is threefold:

1. To avoid unnecessary hearings;
2. To shorten the time required to obtain effective relief; and
3. To provide debtor-tenants with a full opportunity to respond and to schedule a hearing, if appropriate.

B. Legal basis for the procedure

The procedure is based upon *In re Smith*, 105 B.R. 50 (C.D. Cal. 1989) and *In re Windmill Farms*, 841 F.2d 1467 (9th Cir. 1988). The procedure also relies on Local Bankruptcy Rules 9013-1(g)(1)(m), and 9013-1(a)(12) and (13).

C. Fact patterns to which the procedure applies

Based upon the above authorities, the procedure may only be used when the rights of the debtor to possess residential or commercial premises have been terminated *before* the petition was filed. Therefore, a complaint for unlawful detainer must have been filed prepetition.

D. The revised procedure

The revised procedure is analogous to the procedure outlined in Local Bankruptcy Rule 9013-1(g)(1). However, different time frames apply. Follow the seven steps outlined below:

1) **Preparing the Notice** – Attached is a copy of a document entitled **NOTICE OF IMMINENT ENTRY OF ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING** (the “Notice”). This Notice has spaces in which parties and dates must be filled in. First, fill in the names of the movant and debtor in the appropriate spaces. Next, fill in the dates. These dates will *always* fall on ***Mondays*** and ***Thursdays***.

a) **Mondays** – Choose a Monday. Fill in the same date for each Monday space.

b) **Thursdays** – Insert the date of the Thursday of the same week as the Monday date.

2) **Notifying and serving the debtor** – Follow the instructions in the Notice for notifying and serving the debtor.

3) **Waiting for debtor's response** – Wait the required three days to determine if the debtor has served you with a response.

4) **Filing a declaration** – If no response is received by you from the debtor within the

three day response period set forth in the Notice, file a declaration according to the instructions outlined in the Notice.

5) **Filing a motion** – AT THE SAME TIME THAT YOU FILE A DECLARATION OF NON RESPONSE, you must file the underlying motion for relief. The relief requested *should not* be for relief from the automatic stay. Rather, the relief requested must be for an order authorizing repossession of *premises*, and be requested in one of two ways:

a) **Non-form motion** – File a motion with the caption: MOTION FOR AN ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT A HEARING.

b) **Form motion** – If you choose to use the form motion for relief from the automatic stay, you must adapt the title of the motion in the manner set forth below.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY (Unlawful Detainer) using the procedure outlined in the NOTICE OF IMMINENT ENTRY OF ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING

The motion must also be accompanied by evidence *in the form of a declaration* that establishes that the moving party is entitled to possession of the premises, and that the debtor's possessory rights were terminated pre-petition. The declaration must fully comply with F.R.C.P. 7056(e).

The motion must also be accompanied by a Notice of Motion, in the event that I determine that the Motion and Declaration requirements have not been met.

6) **Lodging an order** – AT THE SAME TIME THAT THE MOTION IS FILED, lodge an order which is in the identical format of the attached order.

7) **Executing the order** – Upon reviewing the Motion and Declaration, I will sign the Order IF AND ONLY IF:

a) the declaration complies with the requirements outlined in the Notice, and

b) the motion meets the requirements outlined in paragraph 5 above, and

c) either a response is not received, or if a response is received, I determine that no hearing is required.

E. Effect of a response being filed and served by the debtor

If you are served with a timely response, Judge Zurzolo will determine whether a hearing is necessary. As set forth in the Notice, both the movant and the debtor will be notified of the date and time of the hearing if one is set. The hearing date will most likely be on the Tuesday morning which follows the date that your motion and declaration were filed.

F. Effect of moving party not complying with the motion or declaration requirements

If the moving party does not comply with all requirements contained in this procedure, the motion will be put on calendar on a Tuesday morning as a regularly noticed hearing pursuant to Local Bankruptcy Rule 9013-1.

Vincent P. Zurzolo
United States Bankruptcy Judge

ATTACHMENT TO PROCEDURE – FORM NOTICE

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re	BK. No. LA
	Chapter
Debtor(s).	
NOTICE OF IMMINENT ENTRY OF ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING	
Movant(s),	
v.	
Respondent(s).	

NOTICE OF IMMINENT ENTRY OF ORDER AUTHORIZING
REPOSSESSION OF PREMISES WITHOUT HEARING

_____ (“Movant”) is prepared to file a MOTION FOR ORDER AUTHORIZING
REPOSSESSION OF PREMISES WITHOUT HEARING (the “Motion”) against _____
 (“Debtor”) with respect to property commonly known as **[address]** (the “Premises”). The Court has
authorized use of the procedure described in this Notice (“Notice”) as the means for obtaining
repossession of the Premises.

The Court will enter an order authorizing repossession of the Premises without a hearing *IF*:

1. MOVANT complies with every requirement listed below under the paragraph entitled *MOVANT’S REQUIREMENTS*; and
2. DEBTOR fails to comply with every requirement listed below under the

paragraph entitled *DEBTOR'S REQUIREMENTS*.

MOVANT'S REQUIREMENTS:

1. Notice

a. Telephonic – Movant must telephone Debtor and notify Debtor of the terms of this NOTICE.

– Such telephonic notice must be completed by midnight on ***Monday, _____, 20__.***

– In the event that Movant is unable to reach Debtor by phone, ***Movant must make additional efforts at least once during the hours from 6:00 a.m. –12:00 p.m., 2:00 p.m. –6:00 p.m., and 8:00 p.m.–12:00 a.m.,***

– Movant must provide the same telephonic notice to Debtor's counsel, if counsel exists.

b. Service – Movant must serve this NOTICE and a copy of the Motion and papers supporting the Motion on Debtor in one of the following

ways:

(1) by posting a copy on the main entrance to Debtor's residence; or

(2) by personally serving a copy on Debtor.

– Such service must be completed by 5:00 p.m. on ***Monday, _____, 20__.***

– Movant must serve Debtor's counsel, if such counsel exists, with the same NOTICE, Motion, and papers supporting the Motion to be received by 3:00 p.m. on ***Monday, _____, 20__.***

2. Filing Papers – After the three day period for Debtor to respond has elapsed, Movant must file or lodge, as is appropriate, the following three items:

a. Motion – Movant must file the underlying Motion, along with evidence which supports granting of the Motion.

b. Declaration – Movant must file a declaration that provides specific evidence that the notice and service requirements outlined above have been complied with in all respects, including names, dates, times, phone numbers, persons spoken with, addresses, additional efforts, etc.

– A copy of the NOTICE served shall be attached as an Exhibit to the declaration.

– Failure to reach Debtor by telephone shall be explained by detailing efforts to comply with the telephonic notice requirements. This shall include efforts to locate a telephone number for Debtor if Movant claims not to have Debtor's telephone number.

– The declaration shall also state whether a response was timely received from

Debtor. If a timely response was received, the response must be attached as an Exhibit to the declaration.

- c. Order – Movant must lodge an order which is in the form of the order attached to this NOTICE.

DEBTOR'S REQUIREMENTS:

1. **Response** – Debtor shall file a response to Movant's Motion by 3:00 p.m. on *Thursday, _____, 20__*.

– The response shall be filed at the *Bankruptcy filing, 1st Floor of the Federal Building, 300 N. Los Angeles St., Los Angeles, CA 90012*.

– A copy of the response which bears a "Filed" date stamp shall be delivered by 4:00 p.m. on Thursday, _____, 20__ to my chambers located at the Edward Roybal Federal Building, 255 East Temple Street, Suite 1360, 13th Floor, Los Angeles, California 90012.

– Debtor's response shall include:

(1) a request for a hearing; and
(2) legal authority and supportive evidence as to why relief should not be granted in favor of Movant without a hearing.
2. **Service** – Debtor shall serve a copy of its response papers on Movant to be received by Movant by 3:00 p.m. on *Thursday, _____, 20__*.

EFFECT OF COMPLIANCE/NON-COMPLIANCE:

1. **Compliance**
 - a. Movant only – If Movant fully complies, but Debtor does not fully comply, then an ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING shall be entered in favor of Movant.
 - b. Movant and Debtor – If both Movant and Debtor fully comply, the Motion, evidence supporting the Motion, and Debtor's response shall be reviewed.
 - (1) If Debtor has shown evidence that relief should not be granted without hearing, then a hearing shall be held. Parties will be notified by the Court of the hearing date, time and location.
 - (2) If Debtor has not shown evidence that relief should not be granted without a hearing, then an **ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING** shall be entered in favor of Movant.
2. **Non-Compliance** – If neither Movant nor Debtor fully comply, then Movant's Motion shall be set on regular calendar. Movant and Debtor will be notified of the hearing date, time and location.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re	BK. No. LA
	Chapter
Debtor(s).	
ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING [11 U.S.C. SECTION 362(a)]; <i>In re Smith</i> , 105 B.R. 50 (Bankr. C.D. Cal. 1989)	
Movant(s),	[NO HEARING]
v.	
Respondent(s).	

On _____, _____ (“Movant”) served
_____ (“Debtor”) with a NOTICE OF IMMINENT ENTRY OF ORDER
AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING (“Notice”). Movant then filed a
MOTION FOR ORDER AUTHORIZING REPOSSESSION OF PREMISES WITHOUT HEARING
 (“Motion”) against Debtor, along with a declaration regarding service and notification of the Notice
 (“Declaration”). The time for Debtor to respond has elapsed. Debtor has either:

☐ failed to timely respond, or

☐ filed a response, but after I reviewed the response, I determined that a hearing was not
necessary.

After considering the Motion and supporting evidence, and the Declaration, I find and conclude that Movant has complied with the requirements set forth in the Notice.

Pursuant to 11 U.S.C. § 362(a) and In re Smith, 105 B.R. 50 (Bankr. C.D. Cal. 1989), I further find and conclude that the automatic stay of 11 U.S.C. § 362(a) (the “Stay”) does not enjoin Movant from regaining possession of the property commonly known as **[address]** (the “Premises”).

Based on the foregoing,

IT IS ORDERED that Movant is authorized to regain possession of the Premises.

IT IS FURTHER ORDERED that this order is effective in any bankruptcy case, pending or impending, filed by this Debtor or any other person or entity.

DATED:

VINCENT P. ZURZOLO
United States Bankruptcy Judge

NOTICE OF ENTRY OF ORDER AND CERTIFICATE OF MAILING

I certify that this order was entered on:

I also certify that I mailed a copy of this notice and order to the persons
and entities listed below on:

Office of the United States Trustee
Ernst & Young Plaza
725 S. Figueroa Street, 26th Floor
Los Angeles, CA 90017

Movant

Debtor

Attorneys For Movant

Attorneys For Debtor

JON D. CERETTO
Clerk of the United States Bankruptcy Court

Dated:

By: _____
Deputy Clerk